

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

FRANCES SCHWAB,

Plaintiff,

vs.

CIVIL NO. 00-402 BB/DJS

HILTON HOTELS CORPORATION,

Defendants.

MEMORANDUM OPINION AND ORDER

THIS MATTER is before the Court *sua sponte*.

I. BACKGROUND

On May 10, 2001, the Clerk of Court sent a letter to Plaintiffs' counsel putting the Plaintiffs on notice that, unless service was effected upon the defendant by May 29, 2001, the Plaintiffs' case would be dismissed without prejudice. The Clerk also indicated that over one year had elapsed from the filing date of the complaint to the date of the letter, and that Fed.R.Civ.P. 4(m) allows 120 days within which a complaint is to be served on a defendant. To date, the Court record reflects that the defendant has not been served with the complaint.

II. ANALYSIS

Fed.R.Civ.P. 4(m) provides in relevant part that:

If service of the summons and complaint is not made upon a defendant within 120 days after the filing of the complaint, the court, upon motion or on its own initiative after notice to the Plaintiff, shall dismiss the action without prejudice as to that defendant

Plaintiff was notified well after one year that his lawsuit would be dismissed unless service was effected by May 29, 2001. Today's date is May 30, 2001. Twenty days have elapsed since the Clerk's notification letter, and the record reflects that the Plaintiff has failed to comply with that letter.

Furthermore, the Court has the inherent power to impose a variety of sanctions on litigants in order to regulate its docket, promote judicial efficiency, and deter frivolous filings. Martinez v. Internal Revenue Service, 744 F.2d 71, 73 (10th Cir. 1984). One such sanction within the discretionary authority of the Court is to dismiss an action for want of prosecution. Link v. Wabash R.R. Co., 370 U.S. 626, 629-30 (1962).

Based on the Plaintiffs' lack of action in this case, their complaint shall be dismissed without prejudice for want of prosecution.

WHEREFORE,

IT IS ORDERED that this cause of action be, and hereby is, **DISMISSED** without prejudice.

Dated at Albuquerque this 30th day of May, 2001.

A handwritten signature in black ink, appearing to read "Bruce D. Black". The signature is fluid and cursive, with a horizontal line underneath it.

UNITED STATES DISTRICT JUDGE